

RECEIVED
CENTRAL FAX CENTER2100 Pennsylvania Avenue, NW
Washington, DC 20037-3213
T 202.293.7060
F 202.293.7860
www.sughrue.com

AUG 15 2005

FAX

Date August 15, 2005

To Examiner Alan T. GANTT

Of PTO Group Art Unit 2684

Fax (571) 273-8300

From Nataliya Dvorson Reg. No. 56,616

Subject APPEAL BRIEF UNDER 37 C.F.R. § 41.37

Our Ref Q64525 Appln No 09/855,499

Conf No 9426 Inventors Patrick BLANC

Pages 19 (including cover sheet)

Please call attention to problems with this transmission by return fax or telephone. Thank you.

THE INFORMATION CONTAINED IN THIS COMMUNICATION IS CONFIDENTIAL, MAY BE ATTORNEY-CLIENT PRIVILEGED, AND IS INTENDED ONLY FOR THE USE OF THE ADDRESSEE. UNAUTHORIZED USE, DISCLOSURE OR COPYING IS STRICTLY PROHIBITED AND MAY BE UNLAWFUL IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US.

This fax filing includes:

1. This cover sheet (one page)
2. Submission of Appeal Brief (in duplicate with deposit account authorization) (two pages)
3. Appeal Brief under 37 C.F.R. § 41.37 (16 pages)

CERTIFICATION OF FACSIMILE TRANSMISSION

Sir:

I hereby certify that the above identified correspondence is being facsimile transmitted to Examiner Alan T. GANTT at the Patent and Trademark Office on August 15, 2005 at facsimile no. (571) 273-8300.

Respectfully submitted,

Nataliya Dvorson

BEST AVAILABLE COPY

RECEIVED
CENTRAL FAX CENTER

AUG 15 2005

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of

Patrick BLANC

Docket No: Q64525

Appln. No.: 09/855,499

Group Art Unit: 2684

Confirmation No.: 9426

Examiner: Alan T. GANTT

Filed: May 16, 2001

For: A METHOD OF ADJUSTING THE TRANSMISSION POWER OF BASE STATIONS
TRANSMITTING IN MACRO-DIVERSITY

SUBMISSION OF APPEAL BRIEF

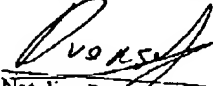
MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Submitted herewith please find an Appeal Brief. Please charge the statutory fee of \$500.00 to Deposit Account No. 19-4880. The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account. A duplicate copy of this paper is attached.

Respectfully submitted,


Nataliya Dvorson
Registration No. 56,616SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE

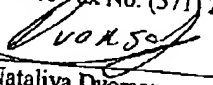
23373

CUSTOMER NUMBER

Date: August 15, 2005

Certificate of transmission

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office Fax No. (571) 273-8300 on August 15, 2005.


Nataliya Dvorson
Registration No. 56,616

BEST AVAILABLE COPY

PATENT APPLICATION
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of

Docket No: Q64525

Patrick BLANC

Appln. No.: 09/855,499

Group Art Unit: 2684

Confirmation No.: 9426

Examiner: Alan T. GANTT

Filed: May 16, 2001

For: A METHOD OF ADJUSTING THE TRANSMISSION POWER OF BASE STATIONS
TRANSMITTING IN MACRO-DIVERSITY

SUBMISSION OF APPEAL BRIEF

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents

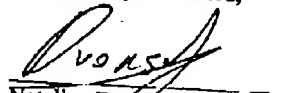
P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Submitted herewith please find an Appeal Brief. Please charge the statutory fee of \$500.00 to Deposit Account No. 19-4880. The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account. A duplicate copy of this paper is attached.

Respectfully submitted,


Nataliya Dvorson
Registration No. 56,616

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE

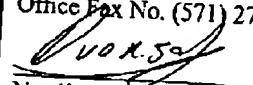
23373

CUSTOMER NUMBER

Date: August 15, 2005

Certificate of transmission

I hereby certify that this correspondence is being
facsimile transmitted to the Patent and Trademark
Office Fax No. (571) 273-8300 on August 15, 2005.


Nataliya Dvorson
Registration No. 56,616

RECEIVED
CENTRAL FAX CENTER

AUG 15 2005

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of

Docket No: Q64525

Patrick BLANC

Appln. No.: 09/855,499

Group Art Unit: 2684

Confirmation No.: 9426

Examiner: Alan T. GANTT

Filed: May 16, 2001

For: A METHOD OF ADJUSTING THE TRANSMISSION POWER OF BASE STATIONS
TRANSMITTING IN MACRO-DIVERSITY

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

In accordance with the provisions of 37 C.F.R. § 41.37, Appellant submits the following:

Table of Contents

I.	REAL PARTY IN INTEREST	2
II.	RELATED APPEALS AND INTERFERENCES	2
III.	STATUS OF CLAIMS	2
IV.	STATUS OF AMENDMENTS	2
V.	SUMMARY OF THE CLAIMED SUBJECT MATTER	3
VI.	GROUND OF REJECTION TO BE REVIEWED ON APPEAL	4
VII.	ARGUMENT	4
VIII.	CONCLUSION	11
	CLAIMS APPENDIX	12
	EVIDENCE APPENDIX	15
	RELATED PROCEEDINGS APPENDIX	16

APPEAL BRIEF UNDER 37 C.F.R. § 41.37
U.S. Appl. No. 09/855,499

I. REAL PARTY IN INTEREST

The real party in interest is ALCATEL, by way of an Assignment recorded on August 13, 2001 at Reel 012070, Frame 0848.

II. RELATED APPEALS AND INTERFERENCES

No other appeals or interferences will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-12 are all the claims pending in the application. Claims 1-12 presently stand finally rejected.

Claims 1-12 stand rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by a PCT Publication No. WO 99/52310 to Salonaho (hereinafter "Salonaho").

No other grounds of rejection or objection currently are pending. This appeal is directed to the rejected claims 1-12.

IV. STATUS OF AMENDMENTS

With the filing of this Brief, all Amendments have been entered and considered by the Examiner.

The application was originally filed with claims 1-10.

Appellant filed an Amendment under 37 C.F.R. § 1.111 on June 28, 2004, in response to the Office Action mailed February 27, 2004, in which claims 1 and 4-8 were editorially amended and claims 11 and 12 were added.

Appellant filed a Response under 37 C.F.R. § 1.116 on April 15, 2005 in response to the Final Office Action dated December 15, 2004. There were no amendments to the claims.

APPEAL BRIEF UNDER 37 C.F.R. § 41.37
U.S. Appl. No. 09/855,499

According to the Advisory Action mailed June 6, 2005, the Examiner maintained the rejection of claims 1-12. On June 15, 2005, Appellant filed a Notice of Appeal to appeal the final rejection of claims 1-12.

The Appendix included with this Brief, sets forth the claims involved in the appeal, and reflects all the claim changes made during the prosecution of the above-described application.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

Appellant's invention relates to a method of adjusting transmission power for base stations transmitting in macro-diversity in a mobile radio-communication system. Appellant's invention further relates to a radio network controller (RNC) and a base station (B node) for adjusting transmission power in the base station transmitting in macro-diversity in a mobile radio-communication system. In Appellant's invention, a reference transmission power for the adjustment is signaled to each base station together with an adjustment period. Each of the base stations periodically adjusts its transmission power to the reference transmission power at said adjustment period (Figs. 1 and 3; page 4, lines 1 to 9 of the specification and page 6, lines 16 to 26 of the specification).

That is, the parameters which are signaled to a base station include a reference power and an adjustment period. The adjustment period is such that a base station periodically adjusts its transmission power to the reference transmission power at this indicated adjustment period. In other words, the reference transmission power is not changed (*i.e.*, not signaled) at each adjustment period. In other words, there is no need to signal updated values frequently even if the reference transmission power has changed. It is only necessary to perform regular adjustments even if they are performed on the most recently signaled value for the reference

APPEAL BRIEF UNDER 37 C.F.R. § 41.37
U.S. Appln. No. 09/855,499

transmission power, which does not necessarily correspond to an up-to-date value of the transmission power (see page 4, lines 10 to 21 of the specification and page 7, lines 1 to 14).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

There is one issue on appeal. The only issue on appeal is whether the Examiner improperly finally rejected claims 1-12 under 35 U.S.C. § 102(e) as being allegedly anticipated by a PCT Publication No. WO 99/52310 to Salonaho (hereinafter "Salonaho").

VII. ARGUMENT

The only issue is whether the Examiner improperly finally rejected claims 1-12 under 35 U.S.C. § 102(e) as being anticipated by Salonaho. Appellant respectfully requests the Board to reverse this final rejection at least because of the following arguments. Appellant addresses each of the finally rejected claims 1-12, below. At least initially, Appellant's arguments focus on claim 1, as being the broadest independent claim rejected on this ground.

A. Exemplary Features of Claim 1

Independent claim 1 recites a unique combination of features including:

a reference transmission power for said adjustment is signaled to each of said base stations together with an adjustment period, and

wherein each of said base stations periodically adjusts its transmission power to said reference transmission power, at said adjustment period.

By way of an example, the parameters which are signaled to a base station include a reference power and an adjustment period. The adjustment period is such that a base station periodically adjusts its transmission power to the reference transmission power at this adjustment period. In

APPEAL BRIEF UNDER 37 C.F.R. § 41.37
U.S. Appln. No. 09/855,499

other words, the reference transmission power is not changed (*i.e.*, not signaled) at each adjustment period. That is, in the exemplary embodiment, there is no need to signal updated values frequently even if the reference transmission power has changed. It is only necessary to perform regular adjustments even if they are performed on the most recently signaled value for the reference transmission power, which does not necessarily correspond to an up-to-date value of the transmission power.

B. Disclosure of the Salonaho document

Salonaho discloses reducing the average downlink transmitting power from a base station to a mobile station during a soft handover. In particular, Salonaho teaches changing the target power (*i.e.*, generally signaled in an initiation message) at each power correction interval (page 6, lines 15-25). A base station calculates a power correction operation to be applied during each power correction interval, based on its initial power, on the signaled target power, and on a predetermined number of power correction steps during a power correction interval. The power correction steps are used in combination with the closed loop adjustments steps (page 6, line 29 to page 7 line 4). Moreover, Salonaho teaches transmitting an initiation message at each power correction interval.

Salonaho further discloses that it is possible to refrain from transmitting the initiation message only if the parameters remain unchanged. In this case, the determining of the commencement could be done by utilizing an internal timer or a counter exceeding a predetermined threshold. Once a new power correction interval is determined, it compares the used transmission power with the target power (col. 6, lines 26 to 33).

APPEAL BRIEF UNDER 37 C.F.R. § 41.37
U.S. Appl. No. 09/855,499

C. Examiner's Position

The Examiner alleges that claim 1 is directed to a method of adjusting transmission power for base stations and is anticipated by Salomaho. The Examiner alleges that Salomaho's method of signaling parameters to the base station used for a correction process is equivalent to signaling the adjustment power together with an adjustment period and periodically adjusting the transmission power to the reference transmission power, at the adjustment period (*see* Final Office Action dated December 15, 2004).

In particular, the Examiner alleges that Salomaho's method allows for a power control processing unit to adjust the power correction interval adaptively where the new value is communicated in the initiation message together with the new target power. Also, there are provisions for the use of a timer in determining the commencement of the interval, and the use of timers are common when providing for periodic changes (*see* continuation sheet of the Advisory Action dated June 6, 2005).

D. Appellant's Position

To be an "anticipation" rejection under 35 U.S.C. § 102, the reference must teach every element and recitation of the Applicant's claims. Rejections under 35 U.S.C. § 102 are proper only when the claimed subject matter is identically disclosed or described in the prior art. Thus, the reference must clearly and unequivocally disclose every element and recitation of the claimed invention.

In Salomaho, the commencement of a new power correction interval is determined by the reception of an "initiation message" containing a new target power. That is, the power correction interval is determined by the receipt of the initiation message. Then, the transmission

APPEAL BRIEF UNDER 37 C.F.R. § 41.37
U.S. Appl'n. No. 09/855,499

power is adjusted to this new target power within this power correction interval initiated by the receipt of the message (page 4 lines 4-6 and page 6 lines 15-37). In other words, in Salonaho, a new target power is signaled for each new power correction interval, and the transmission power is adjusted to a new target power at each new power correction interval. In short, in Salonaho, the "initiation message" needs to be received to commence a power correction interval.

In Salonaho, the commencement of a power correction interval is determined at the base stations, either by the reception of an initiation message (page 6 lines 18-20 of Salonaho) or by a timer or counter exceeding a predetermined threshold (page 6 lines 27-29 of Salonaho). That is, Salonaho does not teach signaling to the base stations a period for the commencement of power correction intervals, and then the base stations commencing power correction periodically, at this signaled period. In other words, Salonaho does not teach signaling to the base stations an adjustment period, and then the base stations adjusting their power periodically, at the signaled adjustment period.

In the section titled "Response to Arguments" appearing on page 2 of the Final Office Action dated December 15, 2004, the Examiner states:

Salonaho teaches power correction intervals, calculating target power and correction step limits for each base station, signaling these parameters to each base station, and each base station executes a power correction algorithm. Typically, intervals are thought of as quite often being periodic. The target power is the reference power as called out in the claim. These parameters are signaled to each base station. The base station does adjust this reference within the power correction or adjustment interval.

APPEAL BRIEF UNDER 37 C.F.R. § 41.37
U.S. Appl. No. 09/855,499

That is, the Examiner is trying to equate the power correction interval of Salonaho with the adjustment period as set forth in claim 1. Appellant respectfully submits, however, that it is improper to compare the power correction interval of Salonaho with the adjustment period as set forth in claim 1. In Salonaho, a power correction interval is an interval containing a number of power correction steps into which a power correction is divided (page 4 lines 9-12 of Salonaho). The present invention as claimed in claim 1 is not concerned with the question of whether adjustments should be carried out in a single step or over a certain number of steps contained in a certain time duration or interval.

Furthermore, in the second numbered paragraph appearing on page 3 of the final Office Action dated December 15, 2004, the Examiner states:

Salonaho meets the following limitations:
wherein a reference transmission power for said adjustment is signaled to each of said base stations together with an adjustment period (page 4, lines 4-6 [the reference transmission power is the target power level])...

It is respectfully noted that in above-cited passage of the Final Office Action, the Examiner does not indicate how Salonaho meets the unique feature of a signaled adjustment period set forth in claim 1.

The Examiner further states in this second numbered paragraph on page 3 of the Final - Office Action:

wherein each of said base stations periodically adjusts its transmission power to said reference power, at said adjustment period (page 6, lines 15-37)...

APPEAL BRIEF UNDER 37 C.F.R. § 41.37
U.S. Apph. No. 09/855,499

At least for the reasons explained above, this passage of Salomaho does not disclose signaling to the base stations an adjustment period, and then the base stations adjusting their power periodically, at the signaled adjustment period.

Therefore, "a reference transmission power for said adjustment is signaled to each of said base stations together with an adjustment period, and wherein each of said base stations periodically adjusts its transmission power to said reference transmission power, at said adjustment period," as set forth in claim 1 is not taught or suggested by Salomaho, which lack periodic adjustment of the transmission power to said reference transmission power at the signaled adjustment period within the meaning of claim 1. For at least these exemplary reasons, Appellant respectfully submits that independent claim 1 is patentably distinguishable from Salomaho.

Appellant respectfully submits that claims 2-5 and 10 are allowable at least by virtue of their dependency on claim 1.

Independent claims 6 and 9 recite features similarly to the features argued above with respect to claim 1. Namely, independent claim 6 among a number of unique features recites "means for signaling a reference transmission power value for said adjustment to each of said base stations, together with an adjustment period," and claim 9 recites a number of unique features including "means for receiving a reference transmission power value for said adjustment, as transmitted by a radio network controller together with an adjustment period; and means for periodically adjusting its transmission power to said reference transmission power value, at said adjustment period."

APPEAL BRIEF UNDER 37 C.F.R. § 41.37
U.S. Appl. No. 09/855,499

Since independent claims 6 and 9 contain features that are similar to the features argued above with respect to claim 1, those arguments are respectfully submitted to apply with equal force here. For at least substantially the same reasons, therefore, Appellant respectfully requests the Examiner to withdraw this rejection of independent claims 6 and 9. Claims 7 and 8 are patentable at least by virtue of their dependency on claim 6 and claims 11 and 12 are patentable at least by virtue of their dependency on claim 9.

Appellant, therefore, respectfully submits that the claims are not anticipated by Salomaho. The rejection is thus not supported by substantial evidence (or any credible evidence at all). The Examiner's arbitrary and steadfast rejection of claims 1-12 must be reversed.

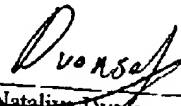
APPEAL BRIEF UNDER 37 C.F.R. § 41.37
U.S. Appln. No. 09/855,499

VIII. CONCLUSION

Unless a check is submitted herewith for the fee required under 37 C.F.R. §41.37(a) and 1.17(c), please charge said fee to Deposit Account No. 19-4880.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,


Nataliya Dvorsn
Registration No. 56,616

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE

23373

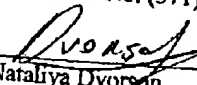
CUSTOMER NUMBER

Date: August 15, 2005

Attorney Docket No.: Q64525

Certificate of transmission

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office Fax No. (571) 273-8300 on August 15, 2005.


Nataliya Dvorsn
Registration No. 56,616

APPEAL BRIEF UNDER 37 C.F.R. § 41.37
U.S. Appl. No. 09/855,499

CLAIMS APPENDIX

CLAIMS 1-12 ON APPEAL:

1. A method of adjusting transmission power for base stations transmitting in macro-diversity in a mobile radio-communications system,
wherein a reference transmission power for said adjustment is signaled to each of said base stations together with an adjustment period, and
wherein each of said base stations periodically adjusts its transmission power to said reference transmission power, at said adjustment period.
2. A method according to claim 1, wherein said periodically-performed adjustments are performed at predetermined instants.
3. A method according to claim 2, wherein the transmitted information is structured in the form of frames that are numbered using continuous increasing numbering, said adjustment period is expressed as a number N of frames, and said predetermined instants corresponds to frames numbered n (modulo N), where $0 \leq n < N$.
4. A method according to claim 1, wherein an updated value for the adjustment period can be signaled.
5. A method according to claim 1, wherein an updated reference transmission power value can be signaled.

APPEAL BRIEF UNDER 37 C.F.R. § 41.37
U.S. Appl. No. 09/855,499

6. A radio network controller, including, for adjusting transmission powers in base stations transmitting in macro-diversity in a mobile radio-communications system: means for signaled a reference transmission power value for said adjustment to each of said base stations, together with an adjustment period.
7. A radio network controller according to claim 6, comprising:
means for signaled an updated adjustment period value.
8. A radio network controller according to claim 6, comprising:
means for signaled an updated reference transmission power value.
9. A base station, including, for adjusting its transmission power when transmitting in macro-diversity in a mobile radio-communications system:
means for receiving a reference transmission power value for said adjustment, as transmitted by a radio network controller together with an adjustment period; and
means for periodically adjusting its transmission power to said reference transmission power value, at said adjustment period.
10. A mobile radio-communications system, comprising means for performing a method according to claim 1.

APPEAL BRIEF UNDER 37 C.F.R. § 41.37
U.S. Appl. No. 09/855,499

11. The base station according to claim 9, wherein said periodically-performed adjustments are performed at predetermined instants.
12. The base station according to claim 11, wherein, the transmitted information is structured in form of frames that are numbered using continuous increasing numbering, said adjustment period is expressed as a number N of frames, and said predetermined instants corresponds to the frames numbered n (modulo N), where $0 \leq n < N$.

APPEAL BRIEF UNDER 37 C.F.R. § 41.37
U.S. Appl. No. 09/855,499

NONE.

EVIDENCE APPENDIX

APPEAL BRIEF UNDER 37 C.F.R. § 41.37
U.S. Appl. No. 09/855,499

NONE.

RELATED PROCEEDINGS APPENDIX